**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

In response to the Commission's Notice of Proposed Rulemaking (NPRM) released April 27, 2001 and published in the Federal Register on May 23, 2001, seeking reply comments (as extended) on or before November 5, 2001, GVNW Consulting, Inc. (GVNW) respectfully presents its reply comments. GVNW Consulting, Inc. is a management-consulting firm, which provides a wide range of consulting services to independent telephone companies. We offer the following reply comments on the feasibility of using a bill and keep approach to achieve a unified regime for intercarrier compensation, and specifically focus on the statement in paragraph 4 of the NPRM that indicates a desire to achieve "*the eventual application of bill and keep to interstate access charges*." Such a proposal would radically alter the way that traditional access charge revenue requirements are recovered from rural customers.

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SUMMARY OF GVNW REPLY COMMENTS

As stated in a June, 2001 article on *Universal Service Reform Comes to Rural America*, former Commission Chair Richard Wiley addressed the dilemma today's Commission faces in dealing with contentious issues:

> [t]he commission did demonstrate its general willingness to establish federal telecommunications policy based on industry consensus. . . Such actions have represented sensible government policy, with resulting benefit to all parties concerned. In the absence of industry agreement, the FCC could be left to sort out seemingly irreconcilable private sector positions on extremely complex issues.

In the Commission's recent RTF Order (FCC 01-157), the Commission evaluated a consensus proposal from a broad spectrum of parties: interexchange carriers, consumer advocates, state regulators, competitive carriers, and incumbent local exchange carriers.

In the course of carefully reviewing the comments filed in this proceeding from these same constituencies, we have found a common theme and trend: The majority of parties are rejecting the bill and keep proposals as offered if applied to interstate access charges.

For the interexchange community, AT&T states that a bill and keep rule would be neither efficient nor competitively neutral, and would open a Pandora's box of unintended consequences.

Representing consumer advocate interests, the National Association of State Utility Consumer Advocates (NASUCA) concluded at page 33:

> Congress did not open up the telecommunications market in 1996 so that the Federal Communications Commission could impose a regulatory outcome that is not observed in any network industry. Moreover, NASUCA believes that the NPRM presents the weakest case we have ever seen for an additional surcharge

> on customers' bills because the Commission is proposing to recover traffic sensitive costs through a fixed subscriber line charge. The Commission has failed to justify that such a radical departure from economic efficiency is in the public interest.

The Office of Public Utility Counsel of Texas (OPUCT) expressed similar concerns at page 48 of their filing:

> OPUCT is troubled by the FCC's proposed bill-and-keep proposals. They seem to be narrowly tailored around a few perceived problems, such as the one-sided compensation for payments for ISP-bound traffic, and to ignore the broader context of telecommunications policy, such as the promotion of competition and universal service. To be sure, both competition and universal service will be imperiled under the FCC's mandatory bill-and-keep proposals.

I. QUANTITATIVE DATA FILED BY PARTIES SUBSTANTIATES GVNW COMMENT DATA THAT INDICATES BILL AND KEEP WITHOUT UNIVERSAL SERVICE FUND INCREASES VIOLATES SECTION 254 OF THE ACT

In our comments, GVNW detailed the dramatic impact that the proposed bill and keep mechanisms would have on rural customers. As Verizon notes in their filing at page 20, ". . .under the Constitutional test set forth in *Duquesne Light Co. v. Barasch*, a new regulatory regime is unlawful if the new rates are not within the 'range of reasonableness' based on the prior regime."

Several other groups were also actively engaged in analyzing quantitative impacts. NECA presented some of its initial analysis of the impacts of the OPP White Paper # 33 COBAK bill and keep mechanism. NECA's averaged analysis reflects that at current SLCs and with the loss of LTS and LSS, the average impact per customer was an increase of $14.64 per month. In NECA's analysis, the cost per line for the highest cost companies could exceed $300 per month.

In its comments, the National Telephone Cooperative Association (NTCA, v) concurs with our concern about the impact of bill and keep without offsetting universal service support:

. . . The impact is more devastating as the carriers get smaller. Subscribers in small study areas with 500 or less lines will see an average end user charge increase of $69 per month. Subscribers in study areas with 500 to 1,000 lines will see an average increase of $46 per month. These increases will hit rural consumers in high cost areas most drastically. The Commission offers no universal service funding proposals to offset these huge increases to end user charges.

II. THE BILL AND KEEP PROPOSALS MUST BE REFERRED TO THE JOINT BOARD

Numerous parties have called for this issue to be referred to the Joint Board deliberative process. We address several issues below.

Universal Service

Because a bill and keep regime would significantly impact universal service in rural America, the Commission must first refer the NPRM issues to the Federal-State Joint Board on universal service. As NTCA states (NTCA, pg. 9): "If ever there was a matter appropriate for Joint Board review, bill and keep is it." Continuing on at page 11, NTCA adds: "Bill and keep is untenable without sufficient support for rural-urban comparable rates and services. The need for support implicates Section 254 and necessarily calls for referral to a Federal-State Joint Board."

Jurisdictional Issues

The comments filed raise the issue as to whether there will be the need for a 410B Joint conference process on the bill and keep issue.

As Verizon notes at page 15 of their filing:

> While this is a matter of concern for all forms of traffic, the issue is particularly acute with respect to access, because of the significant proportion of costs recovered through access charges and because authority over access is split between state and federal regulators.

III. UNACCEPTABLE CROSS SUBSIDIES ARE CREATED UNDER BILL AND KEEP

Several parties point out that bill and keep creates unacceptable cost recovery shifts. The OPUCT states at page 11: "It may also lead to significant and inappropriate cross-subsidies from low-volume to high-volume users; these cross-subsidies would contravene state and federal universal service policies."

At page 44, the Maryland Office of the People's Counsel (Maryland) offers: "These two Staff proposals and the NPRM indicate they are considering recovering interstate traffic sensitive costs from mandatory flat rates billed to end users. Such a proposal would force low use toll subscribers to subsidize high use toll subscribers."

IV. SERVICE QUALITY WOULD BE NEGATIVELY IMPACTED BY INTERSTATE BILL AND KEEP REGIMES

The filed comments also raise the important point of the negative impact on the service quality to the end user customer under a bill and keep regime. Maryland (pages 8-9) states:

> However, under the Staff proposals, no company would have end-to-end responsibility. For example, under the DeGraba proposal, for a long distance call, three different carriers would each have responsibility for different sections of the same call. . . Therefore, the IXC and the two LECs involved could point fingers at each other; and it would be up to the end user, FCC, or other regulatory agencies to determine in which segment of the call the problem had arisen, and who therefore was responsible. Of course, the end user would have no way of knowing where in the call the problem existed. This is an impossibly complex mess that must be avoided by rejecting these proposals.

V. PARTIES AGREE THAT CURRENT BILL AND KEEP PROPOSALS ARE NOT FOUNDED ON SOLID LEGAL GROUND

In our comments, we asserted that the current Commission proposals for a bill and keep regime for interstate access lacked a solid legal foundation. Many other parties agree with our contention.

In Verizon's comments, the carrier cites the Duquesne Light Co. case in the following passage found at pages 13-15:

> If the default compensation system eliminates an existing source of revenue (other than regulatory arbitrage) from a carrier, it must also offer the carrier another source to replace it. All carriers should have a reasonable opportunity to recover their actual costs. Carriers made investments with the perfectly reasonable expectation that regulators would allow them an opportunity to recover their costs. The Supreme Court has found that it raises "serious constitutional questions" if a regulator changes the rules in a way that deprives the carrier of that opportunity [footnote omitted]. As the Court explained, when a ratemaker undertakes a fundamental shift in rate methodologies, the new methodology must be evaluated to determine whether it continues to provide constitutionally adequate compensation for previous investments, as measured under the old methodology.

In our comments, we refute the Commission's assertion that the prior *Computer II* proceeding provides a precedent for bill and keep. The OPUCT reaches a similar conclusion in their comments. They correctly point out that for traffic that originates at the Customer Premises Equipment and traverses the public switched network, there are indeed usage charges either explicit or included as a portion of a flat rate charge. Further, the costs for the local service connection are not shared. OPUCT concludes:

> In short, there is no bill-and-keep arrangement with respect to CPE, as mistakenly implied by the statement that there is a "zero interconnection rate for CPE," and the deregulation of CPE under the Commission's 1980 *Computer II* decision is no precedent.

VI. NUMEROUS OPERATIONAL AND DEFINITIONAL ISSUES ARE PRESENT

Commenters point out a multitude of serious flaws in the proposed bill and keep methodologies. We summarize some of the more significant issues in this next section.

The underlying assumptions found in the current bill and keep proposals ignore the reality of competitive markets

At page 10 of their filing, NASUCA states:

> Yet, under COBAK, the FCC is essentially saying that we should ignore thousands of years of economic and financial evolution and go back to a barter system (albeit imposed) where companies provide each other termination services free of charge with the blind hope that these even out.

The proposals ignore important differences between providers

In our initial comments, we entered into the record in this CC Docket No. 01-92 proceeding a portion of the data from the CC Docket No. 96-45 universal service review that empirically demonstrates that rural is different (reference pages 5 – 7).

The National Telephone Cooperative Association agrees, stating at page 20 of their comments:

> The Commission makes no attempt to tailor the NPRM to the unique circumstances of rural areas. It fails to analyze the effect its "one size fits all" proposals will have on rural consumers and the carriers that serve them. The Commission ignores that there are almost 1000 carriers serving the equivalent of one central office code of a large carrier.

The bill and keep proposals offer a disincentive to invest in infrastructure

As NTCA states at page 23 of their comments: "The Commission should encourage rural LECs to continue to invest in rural areas rather than undermining their efforts with unproven theoretical concepts."

CONCLUSION

At the recent Institute of Public Utilities annual regulatory policy conference, Professor David Gabel termed the bill and keep proposals as “rather frightening.” Professor Gabel also offered that as an economic historian, he had never seen an unregulated market where a bill-and-keep compensation scheme was selected. He added that the telegraph system began that way, and quickly stopped. Dr. Gabel explains: “Why? Because the messages were not being delivered, because the providers were not being paid for delivering them.”

Several parties in the comment round compared bill and keep to current arrangements with the postal delivery system. With respect to the contents in the COBAK and BASICS “envelopes”, we conclude that they must be marked “return to sender – not deliverable as addressed”.

Respectfully submitted,

- electronically filed-

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APPENDIX

Errata regarding data filed in Exhibits of GVNW filing in comment round of CC Docket No. 01-92

In the course of preparing our reply comments in this proceeding, we discovered some data anomalies for two of the carriers' data we included in the Exhibits we attached to our filing on August 21, 2001. These anomalies have a statistically insignificant impact on the total sample results we reflected in the comment round in this proceeding. The values shown for the one carrier for Exhibits A and C, or in the case of Exhibits D, F, G and H for two carriers, are the corrected values for the data previously presented.

APPENDIX A – Components of Common Line

Study Area Code	Long Term Support	Pool Settlement
381637	$831,468	$356,866

APPENDIX C – Common Line Analysis Assuming CL Pool

Study Area Code	Long Term Support	Pool Settlement
381637	$831,468	$356,866

APPENDIX D – Switching Analysis Assuming No TS Pool

Study Area Code	Local Sw. Support	Residual Sw. Req.	Per Line Per Month	Per minute
381637	$676,176	$767,913	$3.61	$0.0161
532387	$240,795	$123,821	$3.33	$0.0202

APPENDIX F – Summary of Residual Interstate Switched Access Requirements

Study Area Code	Switching	Total
381637	$767,913	$3,709,455
532387	$123,821	$416,166

APPENDIX G – Per Line Per Month Amounts

Study Area Code	Switch	Total
381637	$3.61	$17.46
532387	$3.33	$11.21

APPENDIX H – Per Access Minute of Use

Study Area Code	Switch	Total
381637	$0.0161	$0.0770
532387	$0.0202	$0.0678